

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

In the Matter of

**CERTAIN GEL-FILLED WRIST RESTS
AND PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-456

**NOTICE OF FINAL DETERMINATION OF NO VIOLATION OF SECTION 337 OF THE
TARIFF ACT OF 1930**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3152. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 17, 2001, based on a complaint filed on behalf of Minnesota Mining and Manufacturing Company (now called 3M Company) and 3M Innovative Properties Company (collectively complainants), both of St. Paul, Minnesota. 66 *Fed. Reg.* 27535 (2001). The complaint, as supplemented, alleged violations of

section 337 of the Tariff Act of 1930 in the importation, sale_for importation, and sale after importation of certain gel-filled wrist rests and products containing same that infringe certain claims of U.S. Letters Patent 5,713,544 (“the ‘544 patent”). The Commission named as respondents Velo Enterprise Co. Ltd., Taiwan; Aidma Enterprise Co. Ltd. (“Aidma”), Taiwan; Good Raise Chemical Industry Co., Ltd. (“Good Raise”), Taiwan; ACCO Brands, Inc., Lincolnshire, Illinois; Curtis Computer Products Inc. (“Curtis”), Provo, Utah; Allsop, Inc. (“Allsop”), Bellingham, Washington; American Covers Inc., Draper, Utah; and Gemini Industries (“Gemini”), Clifton, New Jersey. The complaint and notice of investigation were later amended to add Crown Vast Development Ltd. and Hornleon Company, Ltd. (“Hornleon”) both of Taiwan as respondents.

On October 22, 2001, the presiding administrative law judge (“ALJ”) issued an initial determination (“ID”), Order No. 6, granting complainants’ unopposed motion to terminate the investigation with respect to respondent Gemini on the basis of a consent order. On January 9, 2002, the ALJ issued an ID, Order No. 12, finding respondents Good Raise and Aidma in default. On May 15, 2002, the ALJ issued an ID, Order No. 15, granting complainants’ unopposed motion to terminate the investigation with respect to respondent Curtis on the basis of a consent order. On May 21, 2002, the ALJ issued an ID, Order No. 16, granting complainants’ unopposed motion to terminate the investigation with respect to respondent Allsop on the basis of a consent order. None of these IDs was reviewed by the Commission.

The ALJ held an evidentiary hearing from January 14, 2002 to January 18, 2002.

On July 24, 2002, the ALJ issued his final ID in which he found no infringement of the claims of the ‘544 patent at issue, and hence no violation of section 337. He also found that complainants had failed to demonstrate satisfaction of the technical prong of the domestic industry requirement of section 337 for the ‘544 patent, and that the claims in issue of the ‘544 patent are invalid due to obviousness and failure to disclose the best mode of practicing the invention. The ALJ also found that the claims in issue of the ‘544 patent are not invalid due to anticipation, indefiniteness, lack of a written description or the lack of enablement, or improper joinder or non-joinder of inventors; that the ‘544 patent is not unenforceable due to inequitable conduct before the U.S. Patent and Trademark Office; and that complainants are not barred from asserting the ‘544 patent due to equitable estoppel. The ALJ noted that respondent Hornleon did not respond to the complaint and notice of investigation or provide written discovery in this investigation, although a representative of the firm appeared and testified at a deposition. Hornleon neither appeared at the hearing nor filed briefs. However, complainants did not move to find Hornleon in default. The ALJ thus found no violation of section 337 with respect to Hornleon, and no party contested that finding.

All parties filed petitions for review and subsequently responded to each other’s petitions. On September 9, 2002, the Commission determined to review: (1) the ID’s construction of the asserted claims of the ‘544 patent; (2) the ID’s infringement conclusions; (3) the ID’s validity conclusions with regard to obviousness and failure to disclose best mode of practice; and (4) the ID’s conclusion with respect to the technical prong of the domestic industry requirement. The Commission determined not to review the remainder of the ID.

In accordance with the Commission's instructions, the parties filed their main briefs on September 23, 2002, and reply briefs on September 30, 2002. Having examined the record in this investigation, including the briefs and the responses thereto, the Commission determined that there is no violation of section 337. More specifically, the Commission found that the domestic products of complainants do not practice any claim of the '544 patent, and thus the technical prong of the domestic industry requirement of section 337 is not met in this investigation. The Commission also found that the accused imported wrist rests, except the Jelly Mouse product, infringe the asserted claims of the '544 patent, and that the '544 patent is not invalid due to obviousness or failure to disclose the best mode of practicing the invention.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and sections 210.45-210.51 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.45-210.51.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: November 25, 2002